
UTAH LABOR COMMISSION

MARK A. SUKO,

Petitioner,

vs.

**CHEVRON PRODUCTS CO.,
S.L. REFINER,**

Respondent.

**ORDER SETTING ASIDE
ALJ'S DECISION**

ORDER OF REMAND

Case No. 04-0669

Mark A. Suko and Chevron Products Co., S.L. Refiner (referred to as "Chevron") each ask the Utah Labor Commission to review Administrative Law Judge Sessions' decision regarding Mr. Suko's claim for benefits under the Utah Occupational Disease Act, Title 34A, Chapter 3, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Suko claims occupational disease benefits from Chevron for right-hand and wrist problems that arose on or about February 27, 2004. Following an evidentiary hearing, Judge Sessions appointed an impartial medical panel to evaluate the medical aspects of Mr. Suko's claim. The panel concluded that Mr. Suko suffered from right-hand carpal tunnel and "trigger finger" syndromes caused primarily by non-occupational factors, but aggravated by Mr. Suko's work at Chevron. Specifically, the panel concluded that Mr. Suko's hand and wrist problems left him with a 6% whole person impairment, with 25% of that impairment (i.e. a 1.5% whole person impairment) attributable to his work.

After receiving the panel's report, Judge Sessions ruled that Mr. Suko was entitled to occupational disease benefits for his right hand and wrist problems. Judge Sessions awarded temporary total disability compensation to Mr. Suko from February 27, 2004, to August 31, 2004—the date Judge Sessions concluded Mr. Suko had reached medical stability. Judge Sessions also awarded permanent partial disability compensation for Mr. Suko's permanent impairment. However, Judge Sessions limited the permanent partial disability compensation to a 1.5% whole person impairment, based upon the medical panel's apportionment between occupational and non-occupational causes. Finally, Judge Sessions ordered Chevron to pay the expenses of medical care necessary to treat Mr. Suko's hand and wrist problems.

In requesting Commission review of Judge Sessions' decision, Mr. Suko argues that he did not reach medical stability until March 1, 2005, rather than August 31, 2004, as determined by Judge

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Sessions. For its part, Chevron requests review of Judge Sessions' decision on the grounds that Judge Sessions should have apportioned Mr. Suko's temporary disability compensation and medical benefits between occupational and non-occupational causes and required Chevron to pay only that 25% that was related to his work at Chevron.

DISCUSSION

Date of medical stability. Mr. Suko contends he did not reach medical stability until March 1, 2005, rather than August 31, 2004, as found by Judge Sessions. In most cases, the determination of the date of medical stability is important because an injured worker's right to temporary total disability compensation continues until that date. But in this case Mr. Suko actually returned to work on May 21, 2004, and his right to any further temporary total disability compensation terminated then. Consequently, the determination that he reached medical stability on August 31, 2004, or March 1, 2005, does not affect his right to receive temporary total disability compensation. For that reason, the Commission views this issue as moot and declines to consider it further.

Apportionment of benefits. As noted above, Judge Sessions reduced Mr. Suko's award of permanent partial disability compensation based on the medical panel's apportionment of occupational and non-occupational causes of Mr. Suko's hand and wrist problems. Chevron argues that Judge Sessions should have made a similar reduction to Mr. Suko's temporary total disability compensation and medical benefits.

In considering Chevron's argument, the Commission notes that § 34A-3-110 of the Utah Occupational Disease Act only permits apportionment under four specific circumstances enumerated in the statute. Then, if one of those four statutory circumstances exist, the apportionment is subject to the formula established by § 34A-3-110. Neither Judge Sessions' findings of fact nor his analysis address the foregoing aspects of § 34A-3-110. Faced with the inadequacy of Judge Sessions' decision, the Commission remands this matter to the Adjudication Division to conduct such further proceedings as it considers necessary to develop an adequate evidentiary record, and then issue a new decision that addresses the application of § 34A-3-110 to Mr. Suko's right to medical and disability benefits.

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ORDER

The Commission remands the matter to the Adjudication Division for further proceedings. It is so ordered.

Dated this 26th day of November, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.